

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

HAROLD JENKINS, *et. al.*,

Plaintiffs,

v.

KELLER WILLIAMS GROUP ONE, INC.,
et. al.,

Defendants.

Case No. 3:22-CV-00156-MMD-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

[ECF Nos. 1, 4]

Before the Court is Plaintiff Harold Jenkins's ("Jenkins"), application to proceed *in forma pauperis* (ECF No. 4), and his *pro se* complaint (ECF No. 1-1). For the reasons stated below, the Court recommends that Jenkins's *in forma pauperis* application, (ECF No. 4), be granted, and his complaint, (ECF No. 1-1), be dismissed, without prejudice.

I. IN FORMA PAUPERIS APPLICATION

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

The Local Rules for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 “[T]he supporting affidavit [must] state the facts as to [the] affiant’s poverty with
 2 some particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th
 3 Cir. 1981) (quotation marks and citation omitted). A litigant need not “be absolutely
 4 destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*,
 5 335 U.S. 331, 339 (1948).

6 A review of the application to proceed IFP reveal Jenkins cannot pay the filing fee;
 7 therefore, the Court recommends that the application, (ECF No. 4), be granted.

8 **II. SCREENING STANDARD**

9 Prior to ordering service on any defendant, the court is required to screen an *in*
 10 *forma pauperis* complaint to determine whether dismissal is appropriate under certain
 11 circumstances. See *Lopez*, 203 F.3d at 1126 (noting the *in forma pauperis* statute at 28
 12 U.S.C. § 1915(e)(2) requires a district court to dismiss an *in forma pauperis* complaint for
 13 the enumerated reasons). Such screening is required before a litigation proceeding *in*
 14 *forma pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507
 15 (9th Cir. 2015).

16 “[T]he court shall dismiss the case at any time if the court determines that – (A) the
 17 allegations of poverty is untrue; or (B) the action or appeal – (i) is frivolous or malicious;
 18 (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief
 19 against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-
 20 (iii).

21 Dismissal of a complaint for failure to state a claim upon which relief may be
 22 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. §
 23 1915(e)(2)(B)(ii) tracks that language. When reviewing the adequacy of a complaint under
 24 this statute, the court applies the same standard as is applied under Rule 12(b)(6). See,
 25 e.g., *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for
 26 determining whether a plaintiff has failed to state a claim upon which relief can be granted
 27 under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6)
 28 standard for failure to state a claim.”). Review under Rule 12(b)(6) is essentially a ruling

1 on a question of law. See *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir.
2 2000) (citation omitted).

3 The court must accept as true the allegations, construe the pleadings in the light
4 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v.*
5 *McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in *pro se* complaints
6 are "held to less stringent standards than formal pleadings drafted by lawyers[.]" *Hughes*
7 *v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotations marks and citation omitted).

8 A complaint must contain more than a "formulaic recitation of the elements of a
9 cause of actions," it must contain factual allegations sufficient to "raise a right to relief
10 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
11 "The pleading must contain something more. . . than. . . a statement of facts that merely
12 creates a suspicion [of] a legally cognizable right of action." *Id.* (citation and quotation
13 marks omitted). At a minimum, a plaintiff should include "enough facts to state a claim to
14 relief that is plausible on its face." *Id.* at 570; see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678
15 (2009).

16 A dismissal should not be without leave to amend unless it is clear from the face
17 of the complaint the action is frivolous and could not be amended to state a federal claim,
18 or the district court lacks subject matter jurisdiction over the action. See *Cato v. United*
19 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th
20 Cir. 1990).

21 **III. SCREENING OF COMPLAINT**

22 Plaintiff Jenkins files his complaint on his own behalf, and on behalf of his wife,
23 Jennifer Provencher (collectively referred to as "Plaintiffs"). (See ECF No. 1-1.) In the
24 complaint, Plaintiffs sues Defendants Kellar Williams Group One, Inc., Renton Yu, and
25 Soo-Young Yu (collectively referred to as "Defendants") for (1) "breach of implied
26 warrant[y] of habitability", (2) "interference with right to quiet enjoyment of premises", (3)
27 declaratory relief, and (4) injunctive relief. (*Id.* at 1.) The complaint centers largely on
28 alleged issues with uncompleted repairs in the bathroom of a rental property occupied by

1 Plaintiffs and managed by Defendants, and allegations that Defendants allowed other
 2 tenants' dogs to "defecate on the subject property lawn area, surrounding areas of the
 3 apartment complex without cleaning." (*Id.* at 5-9.) Plaintiffs seek monetary damages and
 4 injunctive and declaratory relief. (*Id.* at 14.)

5 **A. A Pro Se Party Cannot Represent Other Parties**

6 As a preliminary matter, it appears Jenkins is filing this lawsuit not only on his
 7 behalf, but on his wife's behalf. As a rule, *pro se* parties may not pursue claims on behalf
 8 of others in a representative capacity. *See, e.g., Simon v. Hartford Life, Inc.*, 546 F.3d
 9 661, 665 (9th Cir. 2008) (collecting cases); *Russell v. United States*, 308 F.2d 78, 79 (9th
 10 Cir. 1962) ("A litigant appearing *in propria persona* has no authority to represent anyone
 11 other than himself."). Only a licensed attorney—an active member of the State Bar of
 12 Nevada admitted to practice under the Nevada Supreme Court Rules ("SCR")—is duly
 13 authorized to represent a client in Nevada. *Guerin v. Guerin*, 993 P.2d 1256, 1258 (Nev.
 14 2000) (citing NRS 7.285). Although an individual is entitled to represent himself in the
 15 district court, no rule or statute permits a non-attorney to represent any other person, a
 16 company, a trust, or any other entity in Nevada courts. *Salman v. Newell*, 885 P.2d 607,
 17 608 (Nev. 1994) (citing SCR 44). Therefore, an individual "has no right to be represented
 18 by an agent other than counsel in a court of law." *Martinez v. Eighth Jud. Dist. Ct.*, 729
 19 P.2d 487, 488 (citing SCR 77; NRS 7.285).

20 **B. Court Lacks Subject Matter Jurisdiction Over Purely State Law Claims**

21 Notwithstanding the above, the Court finds that it lacks subject matter jurisdiction
 22 over this case, as the only claims alleged in the Complaint are for state law issues.
 23 Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*,
 24 437 U.S. 365, 374 (1978). Generally, for the court to have original federal subject matter
 25 jurisdiction, a case must either involve diversity of citizenship between the parties or
 26 involve a claim arising under federal law. *See Caterpillar Inc. v. Williams*, 482 U.S. 386,
 27 392 (1987) ("Absent diversity of citizenship, federal-question jurisdiction is required.")
 28 Alternatively, the Court may exercise supplemental jurisdiction in certain cases. *See* 28

1 U.S.C. § 1367.

2 For the Court to have federal question jurisdiction, the complaint must arise under
3 federal law. 28 U.S.C. § 1331. Generally speaking, “[a] cause of action arises under
4 federal law only when the plaintiff’s well-pleaded complaint raises issues of federal law.”
5 *Hansen v. Blue Cross of Cal.*, 891 F.2d 1384, 1386 (9th Cir. 1989). Here, the claims for
6 a breach of the implied warranty of habitability and interference with the right to quiet
7 enjoyment of premises sound in state law. *See, e.g., Sedona Condo. Homeowners Ass’n,*
8 *Inc. v. Camden Dev., Inc.*, 128 Nev. 933, 381 P.3d 661 (2012) (Nevada Supreme Court
9 adopted implied warranty of habitability as discussed in *Radaker v. Scott*, 109 Nev. 653,
10 885 P.2d 1037 (1993)); NRS 118A.290 (discussing habitability of dwellings); NRS 40.140
11 (defining actions for nuisance on real property). Accordingly, because there is no “issue
12 of federal law” raised by Jenkins’s claim for relief, there can be no federal question
13 jurisdiction over this claim. *Id.*

14 As for diversity jurisdiction, under 28 U.S.C. § 1332(a)(1), federal courts have
15 diversity jurisdiction over civil actions “where the matter in controversy exceeds the sum
16 or value of \$75,000 ... and is between ... citizens of different States.” 28 U.S.C. § 1332.
17 Furthermore, the diversity jurisdiction statute “applies only to cases in which the
18 citizenship of each plaintiff is diverse from the citizenship of each defendant.” *Caterpillar*
19 *Inc. v. Lewis*, 519 U.S. 61, 68 (1996). Here, the Court lacks diversity jurisdiction because
20 both Plaintiffs and Defendants are citizens of Nevada and thus there is no diversity of
21 citizenship. (ECF No. 1-1.)

22 Finally, the Court also finds that it lacks supplemental jurisdiction over the state
23 law claims. Courts have supplemental jurisdiction “over all other claims that are so related
24 to claims in the action within such original jurisdiction that they form part of the same case
25 or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(b).
26 However, as discussed above, the Court lacks original jurisdiction over the state law
27 claims. Because supplemental jurisdiction requires that the Court have original jurisdiction
28 over at least one *other* claim, the Court may not exercise supplemental jurisdiction over

1 the state law claims.

2 In sum, the Court lacks subject matter jurisdiction over Plaintiffs' claims and
3 therefore the complaint should be dismissed for lack of subject matter jurisdiction.

4 **IV. CONCLUSION**

5 For good cause appearing and for the reasons stated above, the Court
6 recommends that the application to proceed *in forma pauperis*, (ECF No. 4), be granted,
7 and the complaint, (ECF No. 1-1), be dismissed, without leave to amend.

8 The parties are advised:

9 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
10 Practice, the parties may file specific written objections to this Report and
11 Recommendation within fourteen days of receipt. These objections should be entitled
12 "Objections to Magistrate Judge's Report and Recommendation" and should be
13 accompanied by points and authorities for consideration by the District Court.

14 2. This Report and Recommendation is not an appealable order and any
15 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
16 District Court's judgment.

17 **V. RECOMMENDATION**

18 **IT IS THEREFORE RECOMMENDED** that the application to proceed *in forma*
19 *pauperis*, (ECF No. 4), be **GRANTED**;

20 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** the complaint, (ECF No. 1-
21 1);

22 **IT IS FURTHER RECOMMENDED** that the complaint, (ECF No. 1-1), be
23 **DISMISSED, WITHOUT LEAVE TO AMEND**; and,

24 **IT IS FURTHER RECOMMENDED** that this action be **CLOSED**, and that judgment
25 be entered accordingly.

26 **DATED:** May 2, 2022.

27 
28 **UNITED STATES MAGISTRATE JUDGE**